

EXHIBIT A

EXHIBIT A

DISTRICT COURT CIVIL COVER SHEET A- 15 - 717757 - C

County, Nevada

Case No. _____

XXXI

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): RUSSELL SCHILLEREFF	Defendant(s) (name/address/phone): THOMAS MANAGEMENT CORPORATION
Attorney (name/address/phone): JOSHUA M. SANTERAMO, ESQ. SCHEUTZE & McGAHA, P.C. 601 S. Rancho Drive, Suite C-20 Las Vegas, Nevada 89106	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input checked="" type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

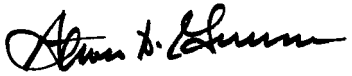
Business Court filings should be filed using the Business Court civil coversheet

April 29, 2015

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 **WILLIAM W. McGAHA, ESQ.**
Nevada Bar #3234
2 **JOSHUA SANTERAMO, ESQ.**
Nevada Bar #12086
3 **SCHUETZE & McGAHA, P.C.**
601 S. Rancho Drive, Suite C-20
4 Las Vegas, Nevada 89106
5 Fax: (702) 369-2110
Attorneys for Plaintiff

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 **RUSSELL SCHILLEREFF, an individual**
9 **Plaintiff,**

10 **vs.**

11 **THOMAS MANAGEMENT**
12 **CORPORATION, a Foreign Corporation;**
13 **DOES I through X inclusive, and ROES**
CORPORATIONS XI through XX,
14 **inclusive,**

15 **Defendants.**

Case No: **A- 15 - 717757 - C**
XXXI
COMPLAINT FOR:

1. Retaliation in Violation of the Nevada Industrial Insurance Act;
2. Discrimination in Violation of Title VII of the Civil Rights Act of 1964 (as amended), and the American With Disabilities Act (ADA);
3. Retaliation in Violation of the ADA;
4. Discrimination and Retaliation In Violation of NRS 613.330, et. al;
5. Intentional Infliction of Emotional Distress; and
6. Negligent Hiring, Training, and Supervision

21 **[DEMAND FOR JURY TRIAL]**

22 **COMES NOW**, Plaintiffs, **RUSSELL SCHILLEREFF**, by and through his attorneys of
23 record, **WILLIAM W. McGAHA, ESQ.**, and **JOSHUA SANTERAMO, ESQ.**, of the law offices
24 of **SCHUETZE & McGAHA, P.C.**, and for causes of action against Defendants, and each of
25 them, allege as follows:

26 **///**

27 **///**

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I.

PARTIES

1. Russell Schillereff ("Plaintiff") was an individual employed by Thomas Management Corporation ("Thomas Cuisine"). Plaintiff was at all times during his employment with Defendant a resident of the County of Clark, State of Nevada.

2. Defendant Thomas Cuisine was and is a corporation doing business in the County of Clark, State of Nevada. Thomas Cuisine's main office was and is located at 640 E Franklin Road, Meridian, ID 83642.

3. Upon information and belief, and at all times relevant hereto, the identities of the Defendants named and/or fictitiously named as DOES I through X and ROES CORPORATIONS XI and XX, are all entities doing business as Thomas Cuisine, and/or other names, and each of them were individuals, partnerships, companies, corporations, or other entities that by reason of such relationships with Defendants, and each of them, are jointly and severally responsible and liable for the damages alleged herein. The true names and capacities whether individual, corporate, associate or otherwise of Defendants DOES I through X and ROES CORPORATIONS XI and XX, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and therefore, alleges that each Defendant herein designated as a DOE or ROE is legally responsible in some manner for the events and happenings herein referred to and proximately caused the injury and damages alleged herein. Plaintiff is informed and believes and thereon alleges that DOES I through X and ROES CORPORATIONS XI and XX, inclusive, are residents and citizens of the State of Nevada or are corporations doing business in the State of Nevada. Plaintiff is informed and believes and thereon alleges that Defendants participated in, ratified and/or condoned the acts complained of in Plaintiff's Complaint and the subject matters of this action. Therefore, Plaintiff requests leave of the Court to amend this Complaint to name the Defendants specifically when their true identities become known.

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II.

FACTUAL ALLEGATIONS

4. Plaintiff was hired by Defendant Thomas Cuisine on or around October 11, 2013 as a chef in Las Vegas, Nevada.

5. Plaintiff was injured while on work duty on December 13, 2013, sustaining knee and low back injuries.

6. Immediately after the injury, Plaintiff sought treatment at Desert Springs Hospital and completed a C-4 Form to open a worker's compensation case.

7. Plaintiff was diagnosed with a meniscus tear in the knee that would later require surgery.

8. Plaintiff also has herniated disks in his low back, which have not resolved to date, and he has been recommended for surgery.

9. Thomas Cuisine, through Craig Richey (Human Resource Director), acknowledged notice of the injury and requested that a "Return-to-Work Evaluation" be completed.

10. In Richey's December 13, 2013 letter, Thomas Cuisine also stated that it could "provide modified/transitional duty from the sedentary range up to modifications of the employee's regular position" so that Plaintiff could return to work while completing treatment.

11. John Nault (Safety Specialist) for Defendant also contacted Plaintiff by email on December 18, 2013 to acknowledge the workplace injury and asked for "Return-to-Work-Evaluations" to be completed if a modified work release was necessary.

12. Under information and belief, Thomas Cuisine has provided modified work duty at the sedentary range to individuals who worked with Plaintiff and/or at his location prior to his injury.

13. Plaintiff's doctor completed two different "Return-to-Work Evaluation Forms" on December 19th and 31st, updating his treatment progress and current physical capabilities. Plaintiff was not yet released to work at this time.

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1 14. Thomas Cuisine was also closed during this period of time at the end of
2 December for the holiday schedule.

3 15. Plaintiff kept in contact with John Nault, Craig Richey, and Greg Anderson (Vice
4 President and Food and Beverage Manager) during this time regarding his work status by
5 phone and text.

6 16. On January 7, 2014, Mark Rosen, M.D. released Plaintiff back to work with light
7 duty restrictions that Defendant had the ability to accommodate.

8 17. Employers Assurance Company accepted the claim relevant to the knee and low
9 back on January 8, 2014, Claim # 2013219435.

10 18. On January 8, 2014, Plaintiff also received a notice from InfiniSource that his
11 employment had been terminated January 6, 2014, and that he would need to continue health
12 insurance coverage under COBRA.

13 19. No one had contacted Plaintiff prior to receiving the InfiniSource letter to notify
14 him that he had been terminated.

15 20. On January 8th, Plaintiff called Craig Richey to ask why he had been terminated
16 and that he was released back to work on light duty on January 7th. His work restrictions
17 included: no carrying, no pushing, no stooping, no climbing, and no pulling.

18 21. Richey claimed that "Nevada is a right to work state" and that Defendant could
19 do "what it wants" with Plaintiff's employment.

20 22. Richey also stated that he did not need to place Plaintiff on light duty.

21 23. Plaintiff also contacted Greg Anderson, who informed him that he had already
22 been replaced.

23 24. Plaintiff was terminated right before he was scheduled to be promoted to
24 Executive Chef, which included a salary increase to \$55,000.00 per year with potential
25 bonuses that could push his earning potential up to \$70,000.00 per year.

26 25. According to Thomas Cuisine's legal representatives, Defendant claims that the
27 decision to officially terminate Mr. Schillereff was not made until on or after his January 28,
28 2014 doctor's evaluation.

1 26. Defendant also claims, through legal representatives, that no employee is
2 allowed back into "kitchen work" until fully released with no restrictions. This representation
3 is made in spite of the December 13th letter to the contrary, and the fact that Plaintiff has
4 worked with individuals who had modified duty at his location.

5 27. After Plaintiff obtained counsel, Plaintiff was contacted by his immediate
6 supervisor, Greg Zamora, on at least two different occasions in February 2014 from a blocked
7 number.

8 28. During the conversations, Zamora accused Plaintiff of "costing Thomas Cuisine"
9 money, that he would make sure Plaintiff is blacklisted in Las Vegas, and that if Zamora saw
10 Plaintiff again, he would physically assault and beat him.

11 29. Under information and belief, Defendant has also attempted to challenge
12 Plaintiff's worker's compensation benefits by falsely notifying Employers Assurance Insurance
13 that Plaintiff had a prior injury related to the injury complaints in claim # 2013219435.

14 30. Defendant, eventually, offered Plaintiff light duty work after a demand for
15 compensation was sent by Plaintiff's counsel. However, Plaintiff had to refuse said work due
16 to the threats made by Zamora and fear for his safety.

17 31. The subsequent offer of light duty work is a concession by Thomas Cuisine that
18 light duty work was always available at Plaintiff's location.

19 32. On October 15, 2014, Plaintiff filed a charge of discrimination with the U.S. Equal
20 Employment Opportunity Commission, Las Vegas Local Office and the Nevada Equal Rights
21 Commission alleging violations of disability harassment and discrimination under the ADA, and
22 retaliation. Plaintiff was issued a Notice of Right to Sue. Please see attached "**Exhibit 1**",
23 Notice of Right to Sue.

24 33. As a result of her termination and initial denial of her workman's compensation,
25 Plaintiff has suffered lost wages and other financial harm, emotional distress and depression,
26 and had her treatment significantly delayed.

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III.

FIRST CAUSE OF ACTION

(Retaliation In Violation of the Nevada Industrial Insurance Act)

34. Plaintiff repeats and re-alleges every allegation made in the paragraphs above, as though set forth fully herein.

35. The Nevada Supreme Court has recognized a cause of action for "tortious discharge," which arises out of the employer-employee relationship but is not dependent on a contract of continued employment. The essence of a tortious discharge is the wrongful, usually retaliatory, interruption of employment by means which are deemed to be contrary to the public policy of this state. D'Angelo v. Gardner, 107 Nev. 704 (Nev. 1991).

36. That the Nevada Supreme Court has also recognized a cause of action for "tortious discharge" in violation of public policy when an employee is retaliated against by an employer for pursuing his or her rights under the Nevada Industrial Insurance Act. Hansen v. Harrah's, 100 Nev. 60 (Nev. 1984).

37. Defendant Thomas Cuisine retaliated against Plaintiff in violation of the Nevada Industrial Insurance Act by taking adverse employment action against Plaintiff, including but not limited to fabricating reasons for not providing light duty work, terminating his employment without any notice, misrepresenting facts regarding his medical history to Employers Assurance Company, and threatening him with violence for pursuing legal remedies, in addition to other retaliatory acts.

38. As a direct and proximate result of Defendants' unlawful, discriminatory conduct, Plaintiff suffered financial harm, lost wages, loss of earning capacity, loss of employment, and severe physical and emotional distress for which he claims all available categories of damages, including compensatory and punitive damages from Defendant(s).

39. The above described acts of Defendant(s) were intentional, deliberate, willful, malicious, reckless and done with a conscious disregard for the harm caused to Plaintiff and her protected rights, and justify punitive damages.

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1 ("undue hardship"). Further, the law forbids discrimination when it comes to any aspect of
2 employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe
3 benefits, and any other term or condition of employment. Plaintiff has the same rights in every
4 State, among other things, to the full and equal benefit of the laws and proceedings for the
5 security of persons and property as enjoyed by all citizens, and shall, among other things, be
6 subject to like exactions of every kind, and to no other.

7 48. That Plaintiff suffered from a covered disability in one (or all) of three ways:

8 (a) Plaintiff was disabled by way of a physical condition that substantially
9 limited a major life activity, including walking, standing, working, and
10 carrying;

11 (b) Plaintiff has a medically documented physical disability related to his
12 back and knee; and

13 (c) Plaintiff has suffered from a physical disability that lasted more than six
14 months and was not minor in nature, ultimately requiring surgical
15 intervention.

16 49. That Defendant Thomas Cuisine also regarded Plaintiff as having said
17 disability.

18 50. That Plaintiff placed Thomas Cuisine on notice in December 2013 of his injuries
19 and disability, and provided corroborating documentation from he was under care of a
20 physician.

21 51. That once put on notice of Plaintiff's injury, Defendant Thomas Cuisine failed to
22 engage Plaintiff in any sort of formal or informal interactive process as required under the ADA
23 and applicable laws cited herein before unilaterally terminating Plaintiff without notice.

24 52. That Defendant Thomas Cuisine could have allowed Plaintiff to work with
25 reasonable accommodations that would not have caused an undue hardship had it engaged
26 Plaintiff in an interactive formal or informal process, including providing time off and light duty
27 accommodations, which were approved by his doctor on January 7, 2014.

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60. The above described acts of Defendant(s) was intentional, deliberate, willful, malicious, reckless and done with a conscious disregard for the harm caused to Plaintiff and his protected rights, and justify punitive damages.

61. Plaintiff is entitled to all legal and equitable remedies available under the ADA as a result of the retaliation suffered as a direct result of Thomas Cuisine's conduct.

62. Thomas Cuisine retaliated against Plaintiff because Plaintiff opposed that which he reasonably and in good faith believed to be unlawful discrimination in his employment.

63. As a further result of Defendant(s) above described actions, Plaintiff has been required to obtain the services of an attorney to prosecute this action, and is therefore entitled to reasonable attorney's fees and costs.

VI.

FOURTH CAUSE OF ACTION

(Disability Discrimination, and Retaliation Pursuant to NRS 613.330, et. al)

64. Plaintiff repeats and re-alleges every allegation made in the paragraphs above, as though set forth fully herein.

65. The above discrimination, harassment and retaliatory termination by Defendant constitutes unlawful discriminatory employment practices under the Nevada Equal Employment Opportunity Act, NRS 633.310 et seq.

66. As a direct and proximate result of Defendant's discriminatory acts, Plaintiff has suffered and shall continue to suffer monetary damages for the loss of income, false accusations, mental anguish and violation of his rights unless and until the Court grants relief.

67. Plaintiff has had to engage the services of attorneys to represent him in this matter and is entitled to an award of reasonable attorney's fees.

VII.

FIFTH CAUSE OF ACTION

(Intentional Infliction fo Emotional Distress Against the Defendant Employer)

68. Plaintiff repeats and re-alleges every allegation made in the paragraphs above, as though set forth fully herein.

69. The aforementioned conduct of Thomas Cuisine, their agents, employees, and/or representatives, was extreme and outrageous and done for the purpose of injuring Plaintiff.

70. The conduct of Thomas Cuisine, their agents, employees, and/or representatives, was intentional, willful, malicious and outrageous, and therefore, constitutes and intentional infliction of emotional distress to Plaintiff. This is with particular respect to the phone calls placed by Zamora threatening physical violence against the Plaintiff.

71. As a direct and proximate result of Thomas Cuisine's conduct, Plaintiff suffered severe emotional distress which caused and will continue to cause the Plaintiff extreme mental and nervous pain and suffering.

72. As a direct and proximate result of Thomas Cuisine's acts and conduct, Plaintiff incurred and continues to incur loss of earnings, and loss of enjoyment of life, all to said Plaintiff's general damages in an amount to be determined, according to proof at the time of trial.

73. That Thomas Cuisine's conduct constitutes intentional, malicious, willful and wanton acts, thereby entitling Plaintiff to punitive damages according to proof to be determined at the time of trial.

74. As a further result of Thomas Cuisine's above described actions, Plaintiff has been required to obtain the services of an attorney to prosecute this action, and is therefore entitled to reasonable attorney's fees and costs.

X.

SIXTH CAUSE OF ACTION

(Negligent Hiring, Supervision, and/or Training of Employees)

75. Plaintiff repeats and re-alleges every allegation made in the paragraphs above, as though set forth fully herein.

76. Defendant should have known of the propensity of its supervisors and its employees to cause emotional and financial injury to employees, and therefore has knowledge of their potentially harmful effect upon employees.

1 77. Defendant should have been aware that its employees and supervisors are
2 creating a situation, which places Plaintiff in danger of having his rights violated. Because of
3 this awareness, Defendant should have taken protective measures to stop its employee's and
4 supervisors' illegal conduct toward Plaintiff, specifically regarding the retaliatory actions taken
5 against Plaintiff after he was terminated and obtained counsel to pursue his legal rights.

6 78. Defendant knew or should known that the conduct of its employees and
7 supervisors, agents and employees might result in a violation of employee's rights. Defendant
8 failed to institute sufficiently effective training programs, which may have identified its
9 supervisors' and employees' illegal conduct and prevented further recurrences of
10 discrimination or harassment.

11 79. Defendant failed to properly supervise and restrain its agents, supervisors and
12 employees from their illegal discriminatory conduct, and then retaliated against Plaintiff when
13 he attempted in good faith to assert his legal rights.

14 80. Defendant created an atmosphere whereby discrimination is allowed to pervade
15 and in which the ire of its agents, supervisors and employees was raised, knew that its agents,
16 supervisors and employees might cause emotional and financial injury to a fellow employee
17 and thereby authorizes and ratifies such unlawful and tortuous discriminatory conduct toward
18 Plaintiff.

19 81. As a result of each supervisor's, employee's and agent's conduct and based
20 upon the responsibility of Defendant, Plaintiff has suffered damages and suffered special,
21 compensatory and punitive damages in an amount subject to proof at trial.

22 82. Plaintiff has had to engage the services of attorneys to represent him in this
23 matter and is entitled to an award of reasonable attorney's fees.

24 **WHEREFORE**, Plaintiff requests relief as follows:

- 25 1. Back pay, front pay, benefits, statutory and other recoverable damages as
26 allowed by all applicable laws cited herein;
- 27 2. Injunctive relief prohibiting future retaliation and enjoining present discrimination;
- 28 3. Punitive damages;

4. Attorney's fees and costs pursuant to all applicable laws cited herein;
5. For past and future damages in excess of \$10,000.00;
6. For pre-judgment and post-judgment interests; and
7. For such other and further relief as the Court deems proper.

DATED this 29 day of April, 2015.

SCHUETZE & McGAHA, P.C.

By 

WILLIAM W. McGAHA, ESQ.

Nevada Bar #3234

JOSHUA SANTERAMO, ESQ.

Nevada Bar #12086

601 S. Rancho Drive, Suite C-20

Las Vegas, Nevada 89106

Attorney for Plaintiff

EXHIBIT 1

DISMISSAL AND NOTICE OF RIGHTS

To: **Russell Schillereff**
8758 Tom Noon Ave
Apt #101
Las Vegas, NV 89178

From: **Las Vegas Local Office**
333 Las Vegas Blvd South
Suite-8112
Las Vegas, NV 89101



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

551-2015-00164

Jake B. DeMarco,
Intake Supervisor

(702) 388-5013**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



Amy Burkholder,
Local Office Director

JAN 30 2015

Enclosures(s)

(Date Mailed)

CC:

Joshua M. Santeramo, Esq.
SCHUETZE & MCGAHA,
P.C. ATTORNEYS AT LAW
601 South Rancho Drive
Suite C-20 Las Vegas, NV 89106

THOMAS CUISINE MANAGEMENT
6883 Spencer St.
Las Vegas, NV 89119